CHAPTER 5

Caseload and Challenges

5.1 Our reporting year has hitherto been reckoned from 16 May to 15 May of the following year. To coincide with the accounting and auditing period prescribed by the Amendment Ordinance, I have decided that from this year, the reporting period should be adjusted to run from 1 April to 31 March of the following year. The present reporting year therefore covers only 10½ months.

Caseload

5.2 Despite the shorter duration, this period has topped the previous (full) year in a number of figures :

- 12,900 enquiries received;
- 3,736 complaints received; and
- 3,790 complaints concluded.

Additionally, the monthly averages for all these figures this year are by far the highest over the last four years. **Table 1** details our caseload for the years 1998/99 to 2001/02.

5.3 Our telephone complaint service has taken shape since March 2001 while a larger number of complaints now come through e-mail. Our publicity programmes, described in Chapter 7, must have contributed to the increase in enquiries and complaints. Topical issues such as the relief measures for secondary school places allocation in the summer of 2001 also prompted an onslaught of complaints.

Performance Pledges

5.4 Even with the increase in workload, my colleagues continued to strive for thoroughness in the examination of complaints without overlooking the need for earliest practicable completion.

Fig.5.1 **Monthly average of enquiries and complaints for the past four years**

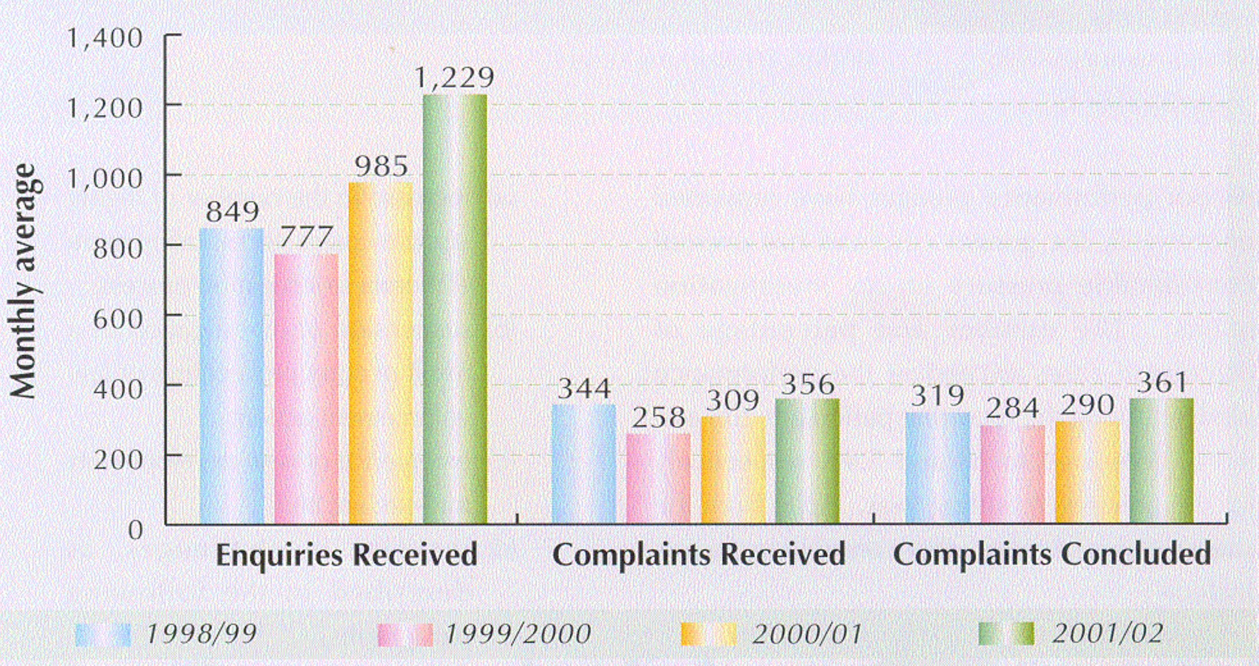

Fig.5.2 Performance pledges

Enquiries

	Standard response time	Maximum response time
By telephone or in person	Immediate	For complicated enquiries, within 30 minutes
In writing	Within 5 working days	For complicated enquiries, within 6-10 working days

Complaints

	Standard response time	Maximum response time
Initial assessment and acknowledgement	*All complaints will be initially screened and acknowledged –*	
	Within 5 working days (target: 80%)	Within 6-10 working days (target: 20%)
Cases concluded	*Acknowledgment with a full reply declining investigation will be sent –*	
- Cases outside jurisdiction or under restriction	Within 10 working days (target: 70%)	Within 11-15 working days (target: 30%)
- Other cases	Less than 3 months (target: 60%)	Within 3-6 months (target: 40%)

Group visits and talks

	Response time
Requests for guided group visits	Within 5 working days
Requests for outreaching talks	Within 10 working days

As our performance pledges have remained unchanged, the greater caseload has exerted considerable pressure on my investigation teams. The number and percentage of completed cases exceeding the performance pledges during the reporting period are 206 and 9.3%, compared to 88 and 5.4% respectively for the previous reporting year. Apart from the sheer volume of cases, other contributory factors include :

(a) increase in the number of highly complex cases necessitating more elaborate investigation process;

(b) suspension of investigation as a result of court proceedings or law enforcement action;

(c) emergence of new developments mid-stream; and

(d) increase in challenges, as described in the following paragraphs.

5.5 To overcome seasonal peaks, I have introduced temporary case officers to handle RAC or revived cases. These officers, with extensive experience in public administration, have been trawled from a continuous recruitment exercise. The arrangement has provided a pool of resources which may be flexibly employed at times of particular pressure. These temporary case officers are remunerated on the basis of the number and complexity of cases assigned to them. During the reporting period, four temporary case officers are on our roll. They are subject to the same code of ethics and the strict secrecy requirement as for my full-time staff.

Challenges

5.6 The reporting period saw an increase not just in caseload but also in instances of challenge to our decisions or actions. They have spread virtually across all stages of our operations, as outlined below.

Jurisdiction

5.7 In the interest of equity, both to the complainants we serve and to the organisations complained against, I interpret our jurisdiction as prescribed in The Ombudsman Ordinance liberally. My aim is always to ascertain the facts and establish the truth. We do not lightly screen out a complaint simply because it involves an issue under restriction such as personnel matters under Schedule 2 to the Ordinance. We examine all the circumstances surrounding a complaint to see if some features of maladministration may also be involved. If so, we will take up the administrative issues without intervening on the aspects under restriction.

5.8 Organisations at times challenge the propriety of our intervention, occasionally with the support of legal advice. Invariably, we explain to the organisations that we are simply addressing the administrative aspects with no intention whatsoever to over-step our purview. The object of this liberal approach is to maximise The Ombudsman's contribution to open government and minimise injustice.

5.9 At the other end of the pendulum, complainants sometimes question my decision to screen out their cases. Although we provide specific reasons as to why we cannot pursue their cases, some complainants just would not accept that their issues fall outside our jurisdiction. Wherever practicable, we advise them on the appropriate authorities or channels for redress. As a cardinal rule, all proposals to screen out complaints must be approved by me personally.

Evidence Collection

5.10 In the course of our inquiries, organisations may raise objections to our request for evidence, notably on grounds of secrecy or data privacy. Our response is always to explain to them our statutory right to access to all information relevant to a case. I am pleased that all organisations have co-operated, although occasionally with some persuasion, and I have not had to resort to summon action during the reporting period.

Decisions

5.11 I am required by law to inform organisations, normally in the form of draft investigation reports, of any criticism or adverse remarks against them or their officers. Organisations sometimes raise reservations or even take exception to our observations, especially on substantiated complaints. Pages of contentions and counter-points, followed by lengthy hearings, are no new experience for my investigation officers. We always provide organisations and their officers ample opportunities to make representations and we critically examine them before finalising our conclusions. Where their representations cannot

be accepted, we still record their comments in our final reports and give our reasons for not accepting them.

Revived Cases

5.12 From time to time, complainants are dissatisfied with The Ombudsman's investigation results, particularly if their complaints are unsubstantiated. Some have even raised allegations against individual officers for being unfair, negligent or incompetent. In a number of cases, these have resulted in requests for reviewing their cases. As all concluding replies and investigation reports are approved by me personally, it would be unfair to regard such allegations as complaints against individual staff. Nevertheless, we treat each and every objection as an appeal, we review the case for any new angle or fresh evidence and we endeavour to address all their points in our response. Where new information comes to light, we re-open investigation.

5.13 In the reporting period, we received 237 requests for review of The Ombudsman's decision on complaints. Three complainants produced useful material for study afresh. Most simply reiterated their arguments and expressed dissatisfaction over our conclusions.

5.14 A few persistent complainants have chosen to voice their discontent through continuous letters of objection or by numerous daily telephone calls to my officers at various ranks. While we understand and even sympathise with their sentiments, we must make it clear that our primary duty is to ensure fairness both to complainants and to organisations under complaint strictly in accordance with the Ordinance. It is clearly not in the public interest or in accord with justice to enter into endless debate over the same arguments. As a general rule, we do not respond indefinitely to requests for review of my decision unless new evidence or fresh arguments are produced.

Our View

5.15 In general, we regard challenge of our views or conclusions as a healthy reminder to sharpen our alertness and to enhance our professionalism. We endeavour always to ensure that our investigations are thorough and impartial. We are ready to take a further look at objective facts from different angles. However, what we cannot do is to bow to pressure or submit to irrationality.

Fig.5.3 Revived cases 2001/02

Reason / Result	New Evidence		New Perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	-	-	3	-	-	3
Decision upheld	-	176	-	-	54	230
Compassionate consideration	Although no evidence of maladministration was detected, The Ombudsman found special circumstances to appeal to organisations for compassionate consideration, e.g. partial waiver of charges or payment of charges by instalments.					4
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